

Summary of Comments/Responses

Department of Education

Provisionally Adopted Maine Department of Education Reg. 101 “Maine Unified Special Education Regulation”

A public hearing on the proposed Department of Education Regulation 101, entitled “Maine Unified Special Education Regulations Birth to Age Twenty”, was held on December 6, 2010. At the hearing, no individuals commented on the proposed regulation.

The deadline for submission of written comments was December 16, 2010. Letters of written comment were submitted by that date. Written comments were received from the following:

1. Barb Pineau
2. Frank Sherburne, Superintendent, RSU #57
3. Buckley J. Hugo, parent
4. Cynthia Bryant, US Department of Education, Office of Special Education Programs
5. Maine Department of Education (technical amendment)
6. Julie Olsen and Susan Mulsow – RSU #21, Katie Hawes – Gorham School Department
7. Lucy Millar, Special Education Director, AOS 94
8. Will Burrow, Special Education Director, RSU #4
9. Trish Harrison, Special Education Director, CDS #3
10. Judy Gove, Director Special Services, Five Town CSD and SAD #28
11. Steve Ocean, Special Education/504 Coordinator, Medomak Valley High School, SAD 40
12. Jill Adams on behalf the Maine Association of Directors of Special Education (MADSEC), Maine Principals Association, Maine School Superintendents Association, and the Maine School Boards Association.
13. Sharon Goguen, Special Education Director, RSU #20
14. Marion Gartley, Special Education Director, RSU #29
15. Shirley Tawney, SAD 7
16. Patti Rapaport, Director of Pupil Services, Bangor School Department
17. Diane Smith, Disability Rights Center

Context

The Department of Education has proposed amendments to the Maine Unified Special Education Regulation Birth to Age Twenty. The proposals are being made following the work of a Stakeholder Group that studied three of the regulation's provisions that are set to expire in June 2011.

The Stakeholder Group, created by Resolve 2009, Chapter 200 (LD 1741), recommended the following changes to the Department of Education, and they are incorporated in the proposed rulemaking:

- revised definitions of “abbreviated day” and “educational performance”;
- a definition of “adverse effect/adversely affects”;
- a refined procedure for abbreviated day;
- a refined procedure for determining adverse effect on educational performance;
- and
- a revised definition of “tutorial services” to clarify that it is a method of instruction delivery rather than a specific service, and to clarify its relationship to abbreviated day.

Clarification of supervision of staff in Section XII. Program Approval has been added, private special purpose schools in Maine as a placement for review has been added (inadvertently deleted in prior rulemaking) and the reference to Written Notice and the timing of transition beginning in 9th grade has been refined to concur with other secondary transition provisions. In addition the US Department of Education has requested that the regulation be amended to reflect that the disability of mental retardation has been amended per Rosa's law to be known as intellectual disabilities.

General

1. Comment (#2): Commenter stated that he “was privileged to work with a group of professionals who were focused on the best interests of Maine’s children, committed to improving these areas within the regulations to insure clarity statewide, and who desired to work in a collaborative manner. The group sought consensus in all decisions. This was the most productive and collaborative stakeholders’ group (he) has been involved with in many years.” Further he indicated that “You will note that there are some significant changes to the areas specified in the LD, as well as areas that are impacted by the changes. As a group, we did not want contradictions in the regulations so when there was the potential for conflict we amended specific areas. In seeking support from constituent groups, we were able to gain practical advice. We did a survey regarding abbreviated day and the results clearly indicated that the issue was not as significant as initially thought. The group did feel that there needed to be changes so we tackled the issue and believe we have developed greater clarity for clear application. Overall, we believe the changes the LD 1741 Stakeholders’ group has made will provide clear guidance to all IEP team members, add consistency throughout the state, and insure that students throughout the state have high quality educational services.”

Response: No change made as a result of these comments.

2. Comment (#17): Commenter states “I wish to provide DRC's comments on the proposed amendments to MUSER regarding the following definitions/changes: a) "abbreviated day" ;b) "educational performance"; c) "adverse effect/adversely affects"; and d) " tutorial services". These changes also include a refined procedure for addressing abbreviated day and for determining adverse effect on educational performance. I wish to start by acknowledging the complexity and difficulty of each of these issues. Many believed at the start of this process that a group of diverse stakeholders would be unable to agree to language on any, let alone, all of these topics. The stakeholder group was successful and timely in its efforts, at a minimum of expense to the state. We wish to commend the Department and the members of the stakeholder group who drafted this language for their exemplary efforts. While DRC does not agree with every word included herein, we support the package as a whole and the process that produced it.

Response: The Stakeholder Group worked diligently to refine the regulations and establish consensus on the language. No change made as a result of this comment.

Section II. Definitions

1. Comment (#9,10,11,12,13,15,16): Commenter did not understand what the last sentence in the definition of adverse effect means. Commenter felt the sentence needed clarification and perhaps replaced with “An adverse effect does not include student performance comparable to same age/grade peers in the general population.”

Response: The Stakeholder Group felt that there could be confusion with “student performance comparable”. No change made as a result of this comment.

2. Comment (#9, 10, 11,12,13,15,16): Commenters state that “in the proposed definition language for “adverse effect” the benchmark gives no severity standard, just the phrase “more than a minor or transient hindrance.” The word “minor” should be replaced with the word “small.”

Response: The word “minor” has been changed to “small” in the definition of adverse effect.

3. Comment (#12): Commenter agrees with the revisions to the definition of abbreviated school day.

Response: No change made as a result of this comment.

VI. Individualized Plan Team Membership

1. Comment (#6): Commenter is concerned about “needing to meet within 45 calendar days. If the student’s needs are that significant, it is not likely that this issue will be resolved within 45 calendar days. Also, if that team ordered evaluations as part of this process the team has 45 school days to complete these evaluations and reconvene. Essentially, the team would need to convene once to meet the 45 calendar day requirement and then again after 45 school days to review evaluations. Also, for the team to “convene a meeting” every 20 days to review the abbreviated day would be cumbersome and costly.”

Response: The Stakeholder Group reviewed this provision extensively as well as survey results and revised the provision to reflect abbreviated day based on a child’s individual educational needs or individual medical needs. Each of these distinct provisions have different time frames. The survey information articulated these two types of abbreviated days, one of a shorter duration and one for a much longer duration. No change made as a result of this comment.

2. Comment (#7): Commenter states “the transition plan section needs to state simply and clearly that the plan must be developed and be in the IEP in effect when the child turns 16. Alternatively, the language should make it unequivocally clear that the plan will be developed during the 9th grade year. Also, language saying “begin” transition planning is dangerous. The regulation should state a clear outcome, such as the IEP must include a transition plan.”

Response: The Joint Committee on Education was clear in its deliberations of the regulation during last spring and in the legislative resolve that the transition would begin in the ninth grade and that the age of 16 not be used. No change made as a result of this comment.

3. Comment (#7): Commenter states “When students are out for medical reasons, such as long term medical fragility, there is no need for meetings every 90 days. The 90 day requirement should be removed. The language that states the team will meet when the child is medically able to increase his/her day should be enough.” In addition the commenter questioned if the abbreviated day procedure exceeded the federal regulations.

Response: The abbreviated day procedure includes language under the abbreviated day based upon a child’s individual medical needs as follows, “In exceptional cases, this may

be exceeded when determined necessary by the IEP Team consistent with medical recommendation(s).” The abbreviated day language was developed to ensure that the IEP Team had clear responsibility for the determination of the day. No change made as a result of these comments.

4. Comment (#8): Commenter indicated regarding the 20 calendar day review that the intention of the stakeholder group was to ensure that the team reviewed the student's status on a regular basis and did not intend to require a face to face meeting every time. The use of the word "convene" sounds very much like a mandated face to face meeting. Commenter suggests that the word "convene" be changed to "confer".

Response: The verb has been changed from ‘convene’ to ‘confer’.

5. Comment (#9,10,11,12,13,15,16): Commenter recommends that the abbreviated day time line should be changed from 45 calendar days to 45 school days.

Response: The timeline for review was intended to be no more than one and a half months, rather than more than two months as the commenter suggests. No change made as a result of this comment.

6. Comment (#12,16): Commenters states that the”post- secondary transition planning language in section VI.2.A is still ambiguous. If the intention is that transition planning begin in 9th grade, rather than 8th, then this should be clearly stated.” Commenter would suggest the following changes: In MUSER Section VI.2(A), For a child with a disability the planning must begin no later than 9th grade, or earlier if determined appropriate by the IEP team. In addition, the commenters recommends that in Section VI.2(C)(3)(H)(b) the language should change from 16 years to agree with the other Post Secondary Sections.

Response: The language in Section VI.2(A) and VI.2(C)(3)(H)(b) has been changed to “For a child with a disability the planning must begin no later than 9th grade, or earlier if determined appropriate by the IEP team.”

VII. Eligibility Criteria and procedures for Determination

1. Comment (#3): Commenter states regarding Section VII.3 “the proposed wording in the introduction of the adverse affect section states “*This procedure applies to all disabilities, except multiple disabilities, specific learning disabilities, and deaf-blindness.*” I suggest delineating with greater clarity which disabilities are subject to the adverse affect definition and those that are not, as follows: “*This procedure applies only to the following disability eligibility categories: Deafness, Emotional Disturbance, Hearing Impairment, Mental Retardation, Orthopedic Impairment, Other Health Impairment, Speech or Language Impairment, Specific Learning Disability and Traumatic Brain Injury. This section does not apply to the following disabilities where the demonstration of adverse affect is not required as a condition for special education eligibility: Autism, Deaf-Blindness, Developmental Delay, Multiple Disabilities, and Specific Learning Disability.* Further the commenter states that the current MUSER definition of Deaf-Blindness [B(2)(c)] currently refers to “adverse effect on educational

performance”. Adverse affect is not required to be demonstrated for Deaf-Blindness and this section should be modified accordingly.

Response: The language has been changed to *“This procedure applies only to the following disability eligibility categories: Deafness, Emotional Disturbance, Hearing Impairment, Mental Retardation (now know as intellectual disability), Orthopedic Impairment, Other Health Impairment, Speech or Language Impairment, Specific Learning Disability and Traumatic Brain Injury. This section does not apply to the following disabilities where the demonstration of adverse affect is not required as a condition for special education eligibility: Autism, Deaf-Blindness, Developmental Delay, Multiple Disabilities, and Specific Learning Disability. The language in section VII.2(2)(c) has been deleted.*

2. Comment (#4): Commenter has indicated that a federal statute was passed in January 2010 that changed the term mental retardation to intellectual disability. The Office of Special Education Programs is suggesting that states make that change in their regulations as they are amending state regulations for other reasons.

Response: The regulation will be amended throughout where there is a reference to mental retardation to read “mental retardation (now known as intellectual disability)”.

3. Comment (#6,7,8,9,10,11,12,13,14,15,16): Commenter likes the language about need for special education that is contained in the current adverse effect regulatory language.

Response: The provision will be maintained in Section VII.3.

4. Comment (#6,): Commenter feels it would “be helpful if the adverse effect language reflected a quantifiable measure for what is adverse (similar to the 1.5 SD).”

Response: Significant concerns were raised in prior rulemakings about a specific quantifiable measure as a threshold. No change made as a result of this comment.

5. Comment (#7): Commenter would like the current detailed definition of adverse effect.

Response: The definition of adverse effect has been moved to the definition section of the regulation. The procedure language has been refined and a required adverse effect form has been developed. No change made as a result of this comment.

IX. Individualized Plans

1. Comment (#12,16): Commenter suggests in that the language in Section IX.3(A)(1)(h) be revised to address the legislative intent that the post secondary transition planning begin in the 9th grade to the following: “The IEP team shall adopt a transition plan during the student’s 9th grade school year, to be updated annually thereafter, and it will include.” This would clearly state when the transition plan needs to be completed.

Response: The language in Section IX.3.(A)(1)(h) has been revised to state: “The IEP team shall adopt a transition plan during the child’s 9th grade school year, to be updated annually thereafter, and it will include:”

X. Early Intervention/ Special Education Services and Settings

1. Comment(#3): Commenter recommends that the language of Section X.2.A(4) Tutorial Instruction be modified in paragraph two as follows: “...*by a certified regular education teacher, or by an educational technician III, as determined by the IEP Team.*”

Response: The phrase “as determined by the IEP Team” has been added.

2. Comment (#7,9,10,11,12,13,15,16): Commenter felt that the tutorial services should be eliminated completely.

Response: The Stakeholder Group worked diligently to refine the tutorial language to accurately reflect the language as a placement type rather than a service. No change made as a result of this comment.

3. Comment (#8): Commenter indicted that the language at the end of the first paragraph of tutorial instruction seems to restrict the use of tutoring to behavior issues or those issues associated with an abbreviated day. In addition, the last sentence of the language indicates that ‘tutorial instruction may not be used in lieu of specialized instruction.’

Response: The language was to make clear that the IEP Team needs to consider the requirements of abbreviated day and the discipline section when discussing tutorial instruction. Tutorial instruction is a type of placement, not a replacement for specialized instruction. No changes made as a result of these comments.

XII. Program Approval

1. Comment (#1): Commenter indicates that Section XII Program Approval at 1.A.(1)(f) titled Professional supervision/professional development reflects that the requirements of the proposed language for professional supervision by a certified administrator are that the administrator have either their 030, 035, 282, or 286. Commenter feels by allowing Assistant SPED Directors or SPED Teachers to be administrators of special education the Department has eliminated the need for Special Education Directors. Commenter further indicates a proposed solution - continue to require a special education administrator to have their 030. Do not allow a professional without it to serve as the certified administrator. Commenter questions if there is a difference in "certified" and "educational" administrator. It is not clear in the proposed language.

Response: The language has been modified to reflect that the certified and employed 282 or 286 need to be supervised by either a 030 or 035. The language is as follows: *If the private school has a full time employed and certified special educator (282) or a teacher of children with severe impairments(286) serving as an educational administrator, either of these types of certified staff must be supervised by a special education administrator (030) or an Assistant Director of Special Education (035) at least 5 hours a month.*

2. Comment (#5): Commenter inadvertently did not include a sentence in the 2009-10 rulemaking to clarify that the Program Approval section pertains only to private schools, which the Department had indicated would be added.

Response: The sentence, 'The State approval applies only to private schools,' has been added to the first paragraph.

3. Commenter (#12,16): Commenter finds the additional language in Section XII.1(A)(1)(f) confusing and should be changed to allow only a Special Education Administrator (030) or an Assistant Special Education Administrator (035) to supervise the provision of special education services in a Special Purpose Private School. Commenter cannot understand how a special educator (282 or 286) can complete a year of administrative experience without being certified as an administrator. The only possibility the commenter could think of would be an administrative internship at which point the person would become certified as an administrator.

Response: See Response to Comment 1 above.